

# Going to Probate Court?

## What do you know about Mediation?



What you should know  
before you take your  
Probate Case to trial.

# What is Mediation?

The Probate Court has a mediation program for contested probate, contested trust, and contested guardianship of property cases. Mediation is an alternative method of resolving disputes and has several advantages over the usual judicial process.

- **YOU DECIDE.** Once a judge makes a decision in a case, at least one party (and sometimes both parties) leaves unhappy. In mediation, you and the other party, with the help of a mediator of your choosing, decide what is an acceptable resolution. This way, you avoid the risk of “losing” in court or reaching an outcome which does not meet the needs of the parties.
- **CUSTOMIZED SOLUTIONS.** Even if you “win” your case, there is no guarantee that the judgment will be satisfied. The court does not collect the money for you. In mediation, a mediator can help you develop a customized agreement that meets the special circumstances of your case (including a clear payment or property distribution plan).
- **COST.** Probate mediators are generally paid by the parties. The costs and terms of mediation are worked out between the parties and the mediator. The Neighborhood Justice Center is also available to mediate these cases. There is a very minimal charge (currently \$25 per party) for the services of the Neighborhood Justice Center’s trained volunteer mediators. Mediation costs are generally significantly less than those of drawn out courtroom litigation.
- **TIMING.** You control the scheduling of mediation sessions, not the court. Generally, cases that are mediated are resolved sooner than cases going to trial.
- **A TRIAL IS STILL AN OPTION.** If you are not happy with the judge’s decision, you have to file an appeal to get it changed. If you are not able to reach an agreement through mediation, you can return to court.

# **H**ow does **Mediation Work?**

Contested probate, trust, and guardianship of property cases may be referred to mediation by the parties or by the court. You must participate in the mediation if the court refers your case to mediation.

## **Who are the Mediators and Who Selects Them?**

Mediators are neutral third parties who provide a structure and environment that assists communication and helps identify key facts and issues of the parties. Mediators also help develop options to move towards agreements that are acceptable to both sides.

The parties may select their own mediator. They should select someone they feel comfortable with and respect. All mediators must follow the Probate Court's Mediation Rules.

## **Who Attends the Mediation Sessions?**

It depends on the case. Each case is different, and mediation is flexible so there are no hard and fast rules that apply to **all** cases. Usually, the attorneys and the parties attend the mediation sessions. Sometimes all parties may meet with the mediator. Sometimes the mediator may meet with just one party at a time.

Mediation in Probate Court is available statewide. If you have any questions about mediation in your probate case, please call the Judiciary's Center for Alternative Dispute Resolution at 522-6464.

# Are there Advantages to Mediation?

**Yes.** Some of the advantages you should consider about mediating are:

## Convenience

The Probate Court assigns you a date on which your case will be heard at the court. All times are during normal working hours. Mediation sessions can be scheduled at any time or place convenient to the mediator and the parties.

## Time

Due to the lengthy nature of the litigation process, it may be months, and in some cases years, before your case is finally resolved. Because the courts deal with large numbers of cases, they may have little time to deal with your case. Hearings are usually brief. Mediation allows you to take the time you feel is necessary to provide all relevant information and work toward an agreement the parties can live with.

## Satisfaction

Mediation allows you to be creative and flexible in resolving your dispute. Many people find this more satisfying than having a judge impose a decision on them. Also, in mediation, you can talk to the other side and let them know how you feel. Probate, trust and guardianship matters usually involve family relationships. Resolving issues through mediation rather than a trial can sometimes help preserve those relationships.

## Privacy

Mediations are private and confidential.

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## ow do I Prepare for Mediation?

Effective mediation requires two-way communication. This means:

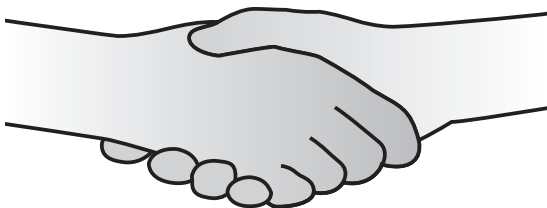
- **Honestly expressing your needs and interests.**
- **Listening to what the other party's needs and interests are.**

The keys to a successful mediation are:

- **Cooperation**
- **Flexibility**

The following suggestions will help you reach a fair agreement:

- **Think of the process as problem solving—not a win/lose battle.**
- **Avoid being fixed on a specific outcome—be open to new ideas or suggestions.**
- **Avoid laying blame or seeking revenge.**
- **Focus on the future, not the past.**
- **Express and listen. Help the other party understand you, and do your best to understand them.**





**Center for  
Alternative Dispute Resolution**

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